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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,521	08/25/2003	Gerald Richter	10541-1832	2280

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EXAMINER

CIRIC, LJILJANA V

ART UNIT	PAPER NUMBER
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3753

DATE MAILED: 12/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/647,521

Applicant(s)

RICHTER ET AL.

Examiner

Ljiljana (Lil) V. Ciric

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 9,10 and 13-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8,11 and 12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 August 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 08252003.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of the first species or the embodiment of Figures 1 and 2 (readable on claims 1 through 8, 11, and 12) in the reply filed on October 6, 2005 is acknowledged. The traversal is on the ground(s) that the examiner "has not provided any reason for insisting upon the restriction". This is not found persuasive because, in making the restriction requirement, the examiner applied the standard accepted Office procedure and used the corresponding form paragraphs for requiring an election between distinct species which are disclosed as such by applicant's originally filed disclosure. See MPEP 809.02(a).

If applicant disagrees with the examiner's determination that the four disclosed species are patentably distinct from each other, the applicant may clearly state for the record that the disclosed species are NOT patentably distinct from each other, whereupon the election requirement would be withdrawn by the examiner. See MPEP 802.01, 806.04(e), 806.04(f), and 804.06(h), for example.

MPEP 808 as cited by the applicant applies to restriction practice between related inventions, such as between a combination and subcombinations thereof or between an apparatus and a process for using the same, for example.

Thus, the requirement is still deemed proper and is therefore made FINAL.

2. Claims 9, 10, and 13 through 17 are hereby withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species or inventions, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on October 6, 2005.

Information Disclosure Statement

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3. The information disclosure statement (IDS) submitted on August 25, 2003 was filed before the mailing date of the first Office action on the merits. The submission is thus in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statements are being considered by the examiner.

Drawings

4. The drawings are objected to because the line quality of the apparatus as shown in Figure 1 is poor. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

5. The abstract of the disclosure is objected to because it does not avoid using phrases which can be implied (i.e., "The present invention involves"). Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1 through 8, 11, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Fehr.

Fehr discloses a vehicle temperature system essentially as claimed, including, for example: a housing 25 having an intake opening duct (not shown; see column 6, lines 4-8) and an output opening readable on discharge opening 2 and/or 4; an evaporator core 1; a heater core 11 disposed in the housing 25 downstream from the evaporator core 1; a separation wall or fixed air deflector 14 having a first end and a second end, the first end being attached to a first portion of the heater core 11 as shown in Figure 1 and extending along the length of the heater core 11 in the space between the evaporator core 1 and the heater core 11 as also shown in Figure 1; a blower 20 disposed in the housing 25 upstream from the evaporator core 1; and, a drain area and corresponding drain hole 15 formed through the housing 25 adjacent to the evaporator core 1 as shown in Figure 1. The evaporator core 1 and the heater core 11 are also disclosed as being in a side by side spatial relationship as recited in claim 3 of the instant application.

The reference thus reads on the claims.

Conclusion

8. The additional prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ljiljana (Lil) V. Ciric whose telephone number is 571-272-4909. The examiner can normally be reached on Mondays through Fridays from 10:00 a.m. to 6:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Mancene, can be reached at 571-272-4930.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained

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from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Ljiljana (Lil) V. Ciric
Primary Examiner
Art Unit 3753